IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

A.S.Nos.727 and 728 of 1993

Janardhanam .. Appellant in both the appeals. (Defendant)

-Vs-

Kalaiselvan .. Respondent in both the appeals. (Plaintiff)

Appeals preferred under section 96 CPC read with O.41 R1 CPC against the common judgment, dated 24.11.1992, rendered in O.S.No.21 of 1991 and O.S.No.242 of 1991 respectively, by the Principal Subordinate Judge, Cuddalore.

For appellant : Mr.V.Raghavachari

For respondent : Mrs.Hema Sampath

COMMON JUDGMENT

Both the above appeals have been preferred against the common judgment, dated 24.11.1992, rendered in O.S.No.219 of 1991 and O.S.No.242 of 1991 respectively, by the Principal Subordinate Judge, Cuddalore. The defendant is the appellant in both the appeals.

2. Plaintiff Kalaiselvan filed the suit in O.S.No.219 of 1991 seeking a decree for Rs.31,624/- with costs and further interest and the case of the plaintiff is that the defendant executed a promissory note in favour of one Mangalakshmi Ammal on 1.8.1988 for a valid consideration of Rs.25,000/- agreeing to repay the same with interest at 12% per annum and no amount was paid either for principal or for interest and on 7.2.1991, Mangalakshmi Ammal assigned the promissory note in favour of the plaintiff for a valid consideration and the plaintiff issued a notice to the defendant on 2.4.1991 calling upon him to pay the entire amount and the defendant sent a reply with false allegations and hence the suit.

3. Plaintiff Kalaiselvan filed the suit in O.S.No.242 of 1991 seeking for a decree for Rs.31,712.50 with costs and further interest and the case of the plaintiff is that the defendant executed a promissory note in favour of one Usha Rani on 1.8.1988 for a valid consideration of Rs.25,000/- agreeing to repay the same with interest at 12% per annum and no amount was paid either for principal or for interest and on 7.2.1991, Usha Rani assigned the promissory note in

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favour of the plaintiff for a valid consideration and the plaintif issued a notice to the defendant on 2.4.1991 calling upon him to pa the entire amount and the defendant sent a reply with fals allegations and hence the suit.

4. The defendant filed independent written statements, but th averments contained therein are similar. According to the defendant he has not paid a pie for and towards the promissory notes and th plaintiff is not a bonafide holder in due course and he is only name lender to oblige the persons who are trying to extract monie from the defendant. The case of the defendant is that one Krishna and Mangalakshmi are husband and wife and their son is Chandrasekara and daughter-in-law is Usharani and they are living together and th lands in Arpisampalayam of an extent of 1.45 acres in S.No.301 0.87 acres in S.No.322/1, 2 acres in S.No.299/2 and 0.87 acres i S.No.294/2A were owned by Chandrasekaran and the properties were subject matter of an equitable mortgage to the State Bank of India Villupuram for obtaining a loan of Rs.1,20,000/- availed on 12.7.198 by Chandrasekaran on the guarantee of his father Krishnan and n repayment of the said loan was made which led to filing of a mortgag suit by the Bank in O.S.No.139 of 1985 on the file of Subordinat Judge, Villupuram against the son and father and the son submitted t the decree and the father remained exparte and a preliminary decre was passed on 3.3.1986 and a final decree also was passed on 30.6.198 for the sale of the properties.

The defendant has further stated that under the abov circumstances, the abovesaid lands were conveyed to him and his mino son by two registered sale deeds dated 8.8.1988 for consideration o Rs.53,800/- and Rs.72,075/- respectively and on the date of sale, th decree obtained by the Bank was subsisting and the defendant was no aware of the same and later on, he came to know that a fraud wa played by the vendor by wilfully suppressing the decree. It i further stated by the defendant that finally the vendor agreed t discharge the decree debt and in consideration thereof, he wanted a additional sum of Rs.50,000/- from the defendant and he furthe agreed that the defendant could pay the additional amount after th discharge of the decree debt and however, as a guarantee, th defendant should execute the promissory note for the said amount an obtained the signatures of the defendant in two undated promissor notes, each for Rs.25,000/- in the name of his mother and wife an later ante-dated them and issued the demand notice, for which, suitable reply was sent by the defendant. The defendant has furthe denied that Mangalakshmi and Usharani assigned the suit promissor notes for valid consideration in favour of the plaintiff.

5. The Trial Court conducted a common trial in both the suits b framing three issues and the evidence was recorded in O.S.No.219 o 1991 and P.Ws.1 to 3 were examined on the side of the plaintiff an Exs.A1 to A9 were marked and D.Ws.1 and 2 were examined on the sid of the defendant and Exs.B1 to B4 were marked. On a consideration o oral and documentary evidence, the Trial Court held that assignmen in favour of the plaintiff is valid and he is a holder in due cours and entitled to recover the amounts due under the instruments from th

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defendant and decreed both the suits as prayed for with costs Challenging the same, the defendant has preferred the present appeals In this Judgment, for the sake of convenience, the parties are referred to as arrayed in the suits.

6. The points for determination in the appeals are:

1. Whether the suit pronotes are not supported by consideration as alleged by the defendant.

2. Whether the assignment of the suit pronotes in favour of the plaintiff is valid and consequently whether he is a "holder in due course", entitled to recover the amounts.

POINT Nos.1 and 2:-

7. Exs.A1 and A5 are the pronotes dated 1.8.1988 in the suits The defendant has admitted the execution of the above pronotes in favour of the assignors of the plaintiff, but contends that they are not supported by consideration and they were executed as a security for due performance of an agreement to pay a further sum of Rs.50,000/- to one Chandrasekaran on his discharge of mortgage decree debt over the properties purchased by the defendant.

8. Mr.V.Raghavachari, the learned counsel appearing for the appellants, contended that the suit promissory notes were not supported by consideration and the assignors of the plaintiff had not possessed of sufficient funds to advance the loans and their family member Chandrasekaran played fraud by suppressing a mortgage decree debt over his properties, which were purchased by the defendant and only as security, the pronotes were executed by the defendant in favour of his mother and wife viz., the assignors of the plaintiff and no consideration was passed on the pronotes and the assignment itself is fraudulent and the plaintiff is not a bonafide holder in due course and the judgment and decrees of the Trial Court are liable to be set aside.

9. Per contra, Mrs.Hema Sampath, the learned counsel for the respondent, contended that the defendant has admitted the execution of the promissory notes and hence there is a presumption that they are supported by consideration and the defendant has not discharged his burden of establishing that the promissory notes were not supported by consideration by adducing acceptable evidence. The learned counsel further contended that the promissory notes have been assigned for valuable consideration in favour of the plaintiff and as a "holder in due course", the plaintiff is entitled to sue the maker of the promissory notes and recover the amounts due under them.

10. The case pleaded by the defendant in the written statement is that he purchased the properties owned by Chandrasekaran under Exs.B1 and B2, registered sale deeds dated 8.8.1988 and on the date of sale, Ex.B4, mortgage decree debt, suffered by Chandrasekaran to the bank was subsisting on the properties and that was suppressed by Chandrasekaran and later, the defendant came to know about that and

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Chandrasekaran wanted an additional sum of Rs.50,000/- from the defendant for discharging the debt and as a security for paying the said sum, the defendant executed Exs.A1 and A5, suit pronotes, in favour of his mother and wife viz., the assignors of the plaintiff. The defendant examined himself as D.W.1 and in the cross-examination, he has admitted that Chandrasekaran informed him about the mortgage debt even before he purchased the properties. It is pertinent to note that the defendant has not alleged any suppression of the mortgage loan over the properties by Chandrasekaran in his Exs.A4 and A8 reply notices. Moreover, Ex.B4, a mortgage decree debt, is recited in Exs.B1 and B2, sale deeds. Hence, it is clear that the defendant knew about the liability on the properties at the time of his purchase under the sale deeds referred above and the alleged fraud pleaded in the written statement is false.

11. The defendant has not stated in the written statement that Mangalakshmi and Usharani were not possessed of sufficient funds to advance loan to the defendant and not even suggestion to that effect was put to them by the defendant while they testified as P.Ws.2 and 3 in the case. On the other hand, P.W.2 has deposed that at the time of execution of pronote, she had cash on hand by selling her property and she lent the same to the defendant and P.W.3 has stated that she had pawned her jewels to advance the loan to the defendant. The testimony of D.W.2 does not in any way advance the case of the defendant. Moreover, Exs.A1 and A5 pronotes are dated 1.8.1988 and whereas, Exs.B1 and B2 sale deeds have been executed on 8.8.1988. In such circumstances, the case of the defendant that the suit promissory notes were executed only as a security and they are not supported by consideration, cannot be accepted.

12. Exs.A2 and A6 are the endorsements of assignments in favour of the plaintiff, made on Exs.A1 and A5 pronotes respectively. P.Ws.2 and 3 have stated that they received the amounts due under the promissory notes from the plaintiff and endorsed those pronotes in favour of the plaintiff.

13. The plaintiff, as P.W.1 has categorically stated that he paid the due consideration on the promissory notes and obtained assignments from P.Ws.2 and 3 and in proof of payment, he has filed Ex.A9 Bank account containing the relevant entry. The endorsements on the assignments also speak about the passing of consideration.

14. The decisions relied on by the learned counsel for the appellant, reported in A.I.R. 1952 Punjab 296 (JWALA BANK LTD. AND ANOTHER v. HABIB AHMED AND ANOTHER), 1993-3-L.W.837 (M.ARUNACHALAM v. V.RAJARAM REDDIAR) and AIR 2004 MADRAS 343 (CHIDAMBARA PATHAR v. K.R.MANI ASARI), are not applicable to the facts of the present case.

15. The plaintiff has let in acceptable evidence to prove the assignments and there can be no doubt that he is a "holder in due course". As per the law laid down by this Court in the decision in KADIR MOIDEEN ROWTHER AND OTHERS v. ASIARU (A.I.R. 1934 Madras 702) the defendant, as maker of the instrument, is not entitled to go into the question of consideration as between the payee and the endorsee

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and even if the endorsee be a mere assignee for collection the make cannot resist his claim on the ground that there was no consideratio for the assignment.

16. Section 36 of the Negotiable Instruments Act confers special right on a "holder in due course" and he is entitled t recover amount not only from payee but also from the drawer. Division Bench of the Assam High Court in JETHMAL GANESHMAL FIRM v HARIDAS ROY AND OTHERS (A.I.R. (36) 1949 Assam 6) held that th negotiable instrument having been transferred, the rights of th parties to the instrument, would be governed by Section 43 of th Negotiable Instruments Act and the plaintiff being a "holder in du course", would be entitled to recover the amount from the maker o the instrument. An analogous position came up for consideratio before the Kerala High Court in the decision in FEDERAL BANK LTD. V P.S.P. PANICKER SIMON CARVES INDIA LTD. (AIR 1976 KERALA 5) an N.D.P.Namboodiripad, J. referred the above decision of the Divisio Bench while examining the scope of the provisions of Sections 36 an 43 of the Negotiable Instruments Act and held as follows:-

> "The very essence of a negotiable instrument is its negotiability and as is well-known there may be one or more assignments of the rights under an instrument. Absence of consideration, or failure of consideration could avoid the liability only as between the parties to the particular transaction for which there was no initial consideration or there was a subsequent failure of consideration. That the legislature never intended to extend such avoidance of obligation to other transactions pertaining to the same instrument is clear from the second part of the provision. The second part lays down that as far as a holder for consideration or a subsequent assignee for consideration are concerned, any one of them can recover the amount due under the instrument not only from his transferor but from any prior party to the instrument. The expression "prior Party" is found in other provisions of the Act, like Sections 36 and 38. The latter part of Section 43 apparently is to safeguard the rights of a holder in due course. Such a positive provision was necessary cause Section 36 of the Act provides that every prior party to the negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. Section 36 of the Act, thus, confers a special right on a holder in due course in the matter of realisation of the amounts due under the instrument, he holds. Section 43 has, therefore, to be read in conjunction with Section 36 of the Act. The rights conferred to a holder in due course under Section 36 are not intended to be defeated on the ground that a prior transaction relating to the instrument was bad for want of consideration. The latter part of Section 43, thus, is to preserve intact the rights conferred on a holder in due course under the general provision contained in Section 36 of the Act."

I am entirely in agreement with the view expressed by the learne

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Judge in the above decision.

17. As already seen, the defendant has failed to prove the absence of consideration for the pronotes. The plaintiff as a "holder in due course" is entitled to recover the amounts due under the promissory notes from the "drawer of the instrument" viz., the defendant. The points are answered accordingly.

18. There are no merits in the appeals and the same are dismissed. No costs.

vks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. THE PRINCIPAL SUBORDINATE JUDGE,
CUDDALORE.

2. THE RECORD KEEPER, VR SECTION,
HIGH COURT, MADRAS.

ONE CC TO MR.V. RAGHAVACHARI, ADVOCATE SR 46993

ONE CC TO MR.S. HEMA SAMPATH, ADVOCATE SR 47191

Common Judgment
in
A.S.Nos.727 and 728 of 199

JRG(CO)

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